IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 20973 of 2004(V)

ORDER IN O.S.276/2000 OF THE II ADDL. SUBORDINATE JUDGE'S COURT, ERNAKULAM.
C.M.A.NO.981/02 OF VI ADDL. DIST. COURT, ERNAKULAM.

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PETITIONER:

HCL INFO SYSTEMS LIMITED,
SREENIVASA CHAMBERS, IVTH FLOOR,
40/7290, M.G.ROAD, COCHIN-682 035,
REP. BY ITS SENIOR ACCOUNTS OFFICER,
A.M.KISHORE.

BY ADV. SRI.GEORGE THOMAS (MEVADA)

RESPONDENT:

ANIL KUMAR, 92/201,
PALATHINKAL HOUSE, MAIN ROAD,
TRIPUNITHURA P.O., TRIPUNITHURA.

BY ADV. SRI.MATHEWS K.UTHUPPACHAN
SRI.MATHEW KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.20973/04

APPENDIX

PETITIONER'S EXTS:

Ext.P1 – TRUE PHOTO COPY OF NOTICE DT.12.3.99

Ext.P2 – TRUE PHOTO COPY OF PLAINT IN O.S.276/2000 DT.6.4.2000.

Ext.P3 – TRUE PHOTO COPY OF I.A.5482/01 FILED BY RESPONDENT DT.2.11.01.

Ext.P4 – TRUE PHOTO COPY OF ORDER IN O.S.276/2000 OF SUB COURT, ERNAKULAM DT.20.7.02.

Ext.P5 – TRUE PHOTO COPY OF JUDGMENT IN CMA.981/02 OF DISTRICT COURT, ERNAKULAM DT.15.10.03.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.20973 OF 2004

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DATED THIS THE 25TH MAY, 2007

J U D G M E N T

The question that arises for consideration is whether a civil court will have territorial jurisdiction to entertain a suit against a company having a branch office within its jurisdiction in respect of a cause of action that did not arise at least in part within its jurisdiction.

2. Ext.P5 judgment of the Sixth Additional District Judge, Ernakulam in C.M.A.No.981 of 2002 by which the finding in Ext.P4 order entered by the Second Additional Subordinate Judge, Ernakulam on issue No.5 regarding the territorial jurisdiction of the court has been set aside, is under challenge in these proceedings under Article 227 of the Constitution of India.

3. The defendant in the suit is M/s.HCL Info Systems Ltd., a Company incorporated under the Companies Act. The contention which was seriously raised by the plaintiff answering the question of jurisdiction was that the defendant having submitted to the jurisdiction of the court is not entitled to contend at a later stage that the court has no territorial jurisdiction to entertain the suit. The above contention was rightly overruled by the learned Sub Judge who found that going by the amended plaint, the cause of action for the claim

(arrears of incentives due to the respondent-plaintiff, a former employee of the Company) arose partly at Madras and partly at Bombay and accordingly found, applying the Explanation to Section 20 of the Code of Civil Procedure, that the suit could be maintained at New Delhi where the Registered Office of the Company is situated or at Madras or Bombay where the cause of action had arisen in part. C.M.A.No.981 of 2002 was preferred by the respondent-plaintiff and in the C.M.Appeal also the learned Additional District Judge was not inclined to uphold the plea of waiver which was pursued by the respondent. But the learned Judge noticed that going by the address and seal of the defendant-Company contained in the written statement, the defendant-Company is situated at Cochin within the jurisdiction of the trial court. Observing that the defendant does not have a case that the Company at Cochin is a branch or that the Company's Head Office or Principal Office is elsewhere and taking note of the submission of the defendant's counsel that the Company is running business at Cochin, the learned District Judge applied Clause (a) of Section 20 of the Code to hold that the Ernakulam Sub Court is having territorial jurisdiction since the Company-defendant is carrying on business within the territorial limits of that court.

4. I have heard the submissions of Sri.George Thomas Mevada, learned counsel for the petitioner and those of Sri.Mathew Kuriakose, learned counsel for the respondent.

5. My attention was drawn by Mr.George Thomas Mevada to Section 20 and also to Order 29 of the Code of Civil Procedure. The learned counsel also drew my attention to Ext.P1 lawyer notice which had been produced along with Ext.P2 plaint as document No.11. Referring to the judgment of this Court in **Commercial Financiers v. Thressia** (1990 (1) KLT 774), the learned counsel submitted that Ext.P1 having been produced along with the plaint is to be construed as part of the pleading itself.

6. Mr.Mathew Kuriakose per contra would give thrust to the plea of waiver which was unsuccessfully raised both before the trial court and before the District Judge. According to him, having submitted to the jurisdiction of the court by filing a written statement answering the original plaint, it is not open to the petitioner to contend at a later stage that the court did not have jurisdiction. The plea of waiver raised by the plaintiff, in my view, has been rightly repelled by the trial court and the appellate court, and this Court will not be justified in considering the same over again in these proceedings initiated by the

defendant-petitioner. The contention that the Ernakulam Court lacks in jurisdiction became available only when the plaint was amended and could not have been raised with respect to the original plaint.

7. It is admitted by the respondent-plaintiff himself through Ext.P1, which is to be construed as a part of his own plaint in terms of the judgment of this Court in **Commercial Financiers v. Thressia** (1990 (1) KLT 774), that the defendant-Company has its Registered Office at New Delhi. It is admitted by him by his further pleadings that the Company has branches at Madras and Bombay and the suit claim as limited by the order of amendment pertains to his service at branches at Madras and Bombay. I am at a loss to see how the learned District Judge can blame the petitioner-Company for not contending that the Company's Head Office is elsewhere and that the office at Cochin is a branch. It is seen that the District Judge has relied on what is described in the judgment as admission by the defendant's counsel that the Company runs business at Cochin. It is common ground that the company, which has its Registered Office at New Delhi, through its branch at Cochin runs business at Cochin also in the same way as it runs business at Madras through its branch at Madras and at Bombay through its branch at Bombay. But what is

pertinent is that the cause of action upon which the amended plaint is instituted did not arise in the Cochin Branch.

8. The three clauses of Section 20 C.P.C. are subject to the Explanation which reads as follows:-

> "**Explanation.--** A Corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

It means that when the defendant is a Corporation, the same shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. The defendant is obviously Corporation governed by Order 29 of the Code. Going by the amended plaint, the cause of action has obviously arisen at Madras and Bombay only. Thus for the purpose of Section 20, it has to be deemed that the defendant-Company carries on business at New Delhi, Madras or Bombay only. The court at Ernakulam will not have jurisdiction in view of the conceded position that no part of the cause of action has arisen within the local limits of that court. The suit could be entertained by courts either at New Delhi, seat of the Company's registered office or

at Madras or Bombay where the cause of action arose in part, but not at Ernakulam. The learned Subordinate Judge was, in my opinion, justified in returning the plaint to the plaintiff-respondent for presentation before the proper court and interference by the District Judge under Ext.P5 was not justified.

The result of the above discussion is that Ext.P5 is set aside and Ext.P4 is restored. The Writ Petition is allowed as above, but, in the circumstances, without any order as to costs.

(PIUS C. KURIAKOSE, JUDGE)

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